SUPREME COURT OF THE UNITED STATES.

No. 95.

UNITED STATES, PLAINTIFF IN ERROR,

vs.

MARY L. ELIASON, ADMINISTRATRIX OF WILLIAM A. ELIASON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

INDEX.

	Original.	Print.
Writ of error - - - - - - - - -	1	3
Citation - - - - - - - - -	2	3
Copy of appeal bond - - - - - - - -	3	4
Style of court, Parties - - - - - - - -	5	4, 5
Capias ad respondendum - - - - - - -	6	5
Nar - - - - - - - - -	7	6
Marshal's return - - - - - - - -	10	7
Rule, bail — Bail — Rule plea and imparlance - - -	11	7, 8
November term, 1839, Plea non assumpsit—issue—Venire -	12	8
March term, 1840, Appearance of plaintiff - - - -	13	9
Defendant's death suggested — Appearance of administratrix — Continuance - - - - - - - -	13	9
November term, 1840, Appearance of parties and case stated -	14	9
Transcript from the treasury referred to in statement of case at page 14	18	12
General regulations of the War department referred to at page 14 -	24	16
Statement of appropriation referred to at page 16 - - -	24	17
Regulations of the War department referred to at page 16 - -	26	17
Statement of the Pay &c. marked B. referred to at page 16 -	29	19
Judgment for defendant in case stated - - - -	30	20
Plaintiffs' exceptions - - - - - - - -	31	20
Clerk's certificate - - - - - - - -	32	21

S. D. Langtree, Print.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the County of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you or some of you, between the United States, plaintiffs, and Mary L. Eliason, administratrix of William A. Eliason, defendant, a manifest error hath happened to the great damage of the said United States, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief justice of the said Supreme Court.

Issued this 5th day of February, 1841.

W. BRENT, *Clerk,*
Circuit Court, District Columbia, for the County of Washington.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Mary L. Eliason, Administratrix of William A. Eliason, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the second Monday January next, pursuant to a writ of error, filed in the clerk's office of

the circuit court of the United States for the District of Columbia, in the County of Washington. Wherein the United States are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said United States, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this 5th day of February, 1841.

Service acknowledged,

JOS. H. BRADLEY, *Attorney,*
For M. A. ELIASON, *Adm'x, &c.*

Copy, Appeal Bond.

Know all men by these presents, that we are held and firmly bound unto Mary L. Eliason, in the full and just sum of two hundred dollars, current money, to be paid to the said Mary L. Eliason, her certain attorney, executors, administrators or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 5th day of February 1841.

Whereas lately at a circuit court of the United States for the District of Columbia, sitting for the County of Washington, in a suit pending in the said circuit court, wherein the United States were plaintiffs, and the said Mary L. Eliason, administratrix of William A. Eliason, was defendant, judgment was rendered against the said United States, and they having obtained a writ of error, and filed *and filed* a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Mary L. Eliason, administratrix of William A. Eliason, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next.

Now the condition of the above obligation is such, that, if the said United States shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

Signed, sealed and delivered on presence of } [L. S.] [L. S.]

Copy test. W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *to wit :*

At a circuit court of the District of Columbia, begun and held in

and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-third day of the same month, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the sixty-fifth.

Present the Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, } *Assistant*
JAMES S. MORSELL, } *Judges.*
ALEXANDER HUNTER, *Marshal.*
WILLIAM BRENT, *Clerk.*

Parties.

In the records of proceedings of the same court among others are the following:

THE UNITED STATES,
against
MARY L. ELIASON administratrix
of WILLIAM A. ELIASON.

Be it remembered, that heretofore, to wit, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and thirty-nine, the United States by Francis Key, Esquire, their attorney, prosecuted and sued forth out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Capias.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

We command you that you take William A. Eliason, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March next, to answer unto the United States in a plea of tresspass on the case and so forth. Hereof fail not, at your peril, and have you then and there this writ.

Witness, William Cranch, Esquire, Chief Judge of our said court, at the city of Washington, the fourteenth day of January, Anno Domini, one thousand eight hundred and thirty-nine. Issued the 16th day of February, 1839.

KEY.

W. BRENT, *Clerk.*

And the said United States by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said William A. Eliason in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington County, to wit:

William A. Eliason, late of Washington county, gentleman, was attached to answer unto the United States in a plea of trespass on the case and so forth. And whereupon, the said plaintiffs by F. S. Key, their attorney, complain that whereas, the said defendant on the first day of February, in the year of our Lord one thousand eight hundred and thirty-nine, at the county aforesaid, was indebted unto the said plaintiffs, in the sum of nine thousand eight hundred and thirty dollars and thirty-two cents, current money, for sundry matters and articles, properly chargeable in an account, as by a particular account thereof, herewith into court exhibited appears; and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised to the said plaintiffs to pay the said plaintiffs the aforesaid sum of money when he should be thereto afterwards required.

And whereas, the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiffs, in another sum of nine thousand eight hundred and thirty dollars and thirty-two cents like money, for the like sum of money by the said plaintiffs to and for the use of the said defendant, before that time paid, laid out and expended, at the special instance and request of the said defendant, and for other money by the said plaintiffs before that time lent and advanced to the said defendant at his special instance and request; and for other money by the said defendant before that time had and received to the use of the said plaintiffs; and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay the said plaintiffs the said last mentioned sum of money, when he should be thereunto required.

And whereas, the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, accounted together with the said plaintiffs, of and concerning divers other sums of money, before that time due, and owing from the said defendant to the said plaintiffs, and then being in arrear and unpaid, and upon that account the said defendant was then and there found in arrear, and indebted to the said plaintiffs in a large sum of money, to wit, in the further sum of nine thousand eight hundred and thirty dollars and thirty-two cents like money; and so being found in

arrear, and indebted to the said plaintiffs the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs, to pay the said plaintiffs the said last mentioned sum of money, when he should be thereunto afterwards, required.

Yet the said defendant not regarding his said several promises and undertakings, so by him made in this behalf as aforesaid, but contriving, and fraudulently intending, craftily and subtilely to deceive and defraud the said plaintiffs in this respect, hath not yet paid the said several sums of money, or any part thereof, to the said plaintiffs (although so to do the said defendant was requested by the plaintiffs, to wit, "on the same day and year aforesaid, and often afterwards, at the county aforesaid,) but he to do this has hitherto refused and still refuses. Whereupon the said plaintiffs say they are injured, and have sustained to the value of twenty thousand dollars current money, and therefore the said United States bring suit, and so forth.

F. S. KEY,
Attorney of the U. S. D. C.

JOHN DOE, } Pledges, &c.
RICHARD ROE, }

A copy of which said declaration was made and sent with the said writ, to the marshal of the district aforesaid, thereon endorsed, "to be served on the defendant with the writ." At which said fourth Monday of March, in the year of our Lord, one thousand eight hundred and thirty-nine, being the day of the return of the aforegoing writ, come into the circuit court here the said United States by their attorney aforesaid, and the marshal of the district aforesaid, to wit, Alexander Hunter, Esq., to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Cepi, copy nar left.

ALEXANDER HUNTER,
Marshal.

Marshal's return on capias.

And the said William A. Eliason being called, appears in court here by Joseph H. Bradly, Esq., his attorney; and thereupon, on motion of the said United States by their attorney aforesaid, it is ruled by the court here, that the said William A. Eliason give special bail in the plea aforesaid, or in default thereof, be committed to the custody of the marshal of the district aforesaid.

Rule bail. Bail.

Whereupon a certain E. A. Eliason, present here in court in his proper person (with the consent of the said United States by their

attorney aforesaid,) undertakes for the said William A. Eliason that in case the said United States shall recover judgment against the said William A. Eliason in the plea aforesaid, or that the said William A. Eliason shall be therein legally convict, that then he, the William A. Eliason shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid in satisfaction thereof, or that he the said E. A. Eliason will do the same for him.

Rule Plea.

And thereupon, on the motion of the said United States by their attorney aforesaid, it is ruled by the court here, that the said Wm. A. Eliason answer to the declaration aforesaid of the said United States in the plea aforesaid, or judgment by the court here will be entered against him in default thereof.

Imparlance.

And the said William A. Eliason, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid, of the said United States in the plea aforesaid and to him it is granted, the same day is given to the United States also.

November Term, 1839. Appearance of parties.

At which said fourth Monday of November, in the year of our Lord, one thousand eight hundred and thirty nine, to which said day the said William A. Eliason had leave to imparle and then to answer to the declaration aforesaid, of the said United States, in the plea aforesaid, come again into the circuit court here, as well the said United States by their attorney aforesaid, as the said Wm. A. Eliason by his attorney aforesaid.

Plea of non assumpsit, ad. Issue joined. Venire ordered.

And the said William A. Eliason by his attorney aforesaid, as before, defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the said United States above against him have complained, and of this he puts himself upon the country and the said United States in like manner and so forth. Therefore let a jury thereon appear before the court here on the fourth Monday of March next, by whom, and so forth. And who neither, &c. To recognize, and so forth. Because as well, and so forth. The same day is given to the said parties then and there, and so forth.

March Term 1840, Appearance of Plaintiffs, Defendants Death Suggested.

At which said fourth Monday of March in the year of our Lord one thousand eight hundred and forty, comes again into the circuit court here the said United States by their attorney aforesaid, and the said William A. Eliason, doth not come, and the said United States by their attorney aforesaid suggest to the court here, that after the last continuance of the plea aforesaid, and before this time at the county aforesaid, the said William A. Eliason departed this life, and the same is not denied.

Appearance of Administratrix.

Whereupon a certain Mary L. Eliason, administratrix of all and singular the goods and chattels, rights, and credits which were of the said William A. Eliason at the time of his death, by Joseph H. Bradley, Esq., her attorney, comes into the circuit court here and defends the force and injury, when &c.

Continuance, November Term, 1840

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attornies aforesaid, and by order of the court here thereupon, is further continued until the fourth Monday of November next.

Appearance of Parties.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, come again into the circuit court here as well the said United States by their attorney aforesaid, as the said Mary L. Eliason, administratrix as aforesaid, by her attorney aforesaid.

Statement of Case.

Whereupon the parties aforesaid, by their attornies aforesaid, file in court here the following statement, subject to the opinion of the court as to the law upon the same.

THE UNITED STATES
vs.
MARY L. ELIASON Admx. of
WILLIAM A. ELIASON.

On the trial of the above cause the plaintiffs to maintain the issue on their part joined, offered in evidence the transcript from the Treasury Department, (copied at page 18,) and the defendant

then offered evidence to shew that the said intestate was a captain in the United States corps of engineers, and as such was ordered to take charge and superintend the works on fortress Calhoun, and took charge of, and continued the said work from the 7th November, 1834, to the 10th of September, 1838: and further offered in evidence the general regulations of the War Department, as follow, (copied at page 24.) And, further, that the said intestate while thus employed, disbursed $214,392 61: that he was also directed to take charge of, and superintend the removal of a light-house into fortress Calhoun, in which service he disbursed $1,143 13: and further that he was charged with the disbursement of, and did disburse the sum of $1,891 43, for incidental expenses of fortifications beginning in the year 1830; and that he purchased for the use of the Engineer Department a set of instruments and case, and the department allowed him for the instruments, but refused to allow him for the case amounting to $10; and further that the pay and emoluments of the said intestate had been stopped by the Government of the United States from the 31st December, 1838, to the 15th day of June, 1839, amounting to $1,014 95, and the defendant then claimed credit.

For compensation for disbursing money on account of fortress Calhoun from 7th November 1834, to 10th September, 1838, up to which time he was in charge of said work, inclusive, at $2 per day - -	$2,816 00
Of which this amount only had been allowed - -	234 00
Balance - - - -	2,582 00
For money disbursed on account for removing light-house, &c. - - - - - -	21 64
For money disbursed for incidental expenses of fortifications - - - - - -	46 95
For case of instruments - - - -	10 00
For pay and emoluments, (marked B.,) copied at page 29 - - - - - -	1,014 95
	$3,689 26
For balance of account rendered 29th March, 1839 -	74 79
	$3,764 05

And further offered evidence that all the claims above stated except that for pay and emoluments had been submitted to, and rejected by, the accounting officers of the Treasury Department; and further produced and offered in evidence the following statement of the state of the appropriations under which the disbursements were made, marked A., (copied at page 24.)

The plaintiffs offered in evidence the regulations of the War De-

partment of 14th March, 1835, (copied at page 26;) and upon the aforegoing statement it is submitted to the court to say whether the defendants intestate was entitled by law to the allowances claimed by him for disbursements as above stated.

If the court is of opinion that he is so entitled, then the judgment to be for the defendant, if otherwise, for the plaintiffs for the amount appearing due by the transcript.

F. S. KEY,
For United States.

JOS. H. BRADLEY,
For Defendant.

Transcript of the Treasury Department

General Account

Dr. Capt. William A. Eliason in ac-

		Incidental Expenses of Fortifications.	Removing light house at Old Point into Fort Monroe.	Fort Calhoun.
1839. March 14,	To balance on settlement, No. 5404,	2,000 00	1,143 13	$3,020 08
		$2,000 00	$1,143 13	$3,020 08
	To balance per contra, - - -	$108 57	–	$2,492 18

referred to in statement at page 14.

of Monies Advanced.

count with the United States. *Cr.*

		Incidental Expenses of Fortifications.	Removing light house at Old Point into Fort Monroe.	Fort Calhoun.
	For sundry disbursements made by him at Fort Monroe, in the first quarter of 1836, including a payment made in 1830 for instruments per abstracts and vs. filed herewith, - - - - -	1,891 43		
	His acct. for transportation of baggage in 1838, $70 40, - -			
	Per diem allowance for disbursing from 7th Nov. 1834, to 3d March, 1835, 117 days, at $2 per day, $234, - - - - -	–	–	304 40
	By requisition No. 3561, on acc. -	–	1,143 13	
	By do. " 3594, on acc. -	–	–	223 50
	By balance due U. States, - -	108 57		2,492 18
		$2,000 00	$1,143 13	$3,020 08

Treasury Department,
3d Auditor's Office, April 8, 1839.
Stated by RD. BURGESS.

2nd Comptroller's Office, April 10, 1839.
Ex'd by CHARLES McGILL.

Statement of differences on settlement of Capt. Wm. A. Eliason's account, April 8, 1839:

Due U. S. per official statement on account of Fort Calhoun,		$2,492 18
Incidental expenses of fortifications,		108 57
		$2,600 75
Claimed pr. his acc. 29th March, 1839,		74 79
Difference,		$2,675 54
Arising as follows:		
Abstract B. 2d and 3d qr. 1836, vo. 34, overcharge in abstract,		$1 00
Abstract A. 4th qr. 1836, vo. 12, John Capron for sundries, the receipt 13-100 less than the amount charged,		13
Vo. 14, John Tunis & Co. for lumber, over extension of 1st line of his acc.		10
Abstract for incidental expenses of fortifications.		
Vo. 27, pay roll, deduct for non-payment to Phil. E. Boyken,	$4 76	
Vo. 28, pay roll, deduct non-payment to L. E. Boyken,	8 96	
		13 72
This sum charged for commission of 2 1-2 per cent. on disbursements for incidental expenses not allowed, prohibited by law,		46 95
Pishey Thompson's bill for instruments, &c.		
The charge for the case of instruments not allowed by Engineer Department,		10 00
This sum charged for compensation for disbursing money on account of Fort Calhoun, from Nov. 2d, 1834, to Sept. 10, 1838, inclusive,	2,816 00	
Of which $2 per diem is allowed from 7th Nov. 1834, the day he reported himself to the Chief Engineer to have assumed the command to the 3d day of March, 1835, the day on which the law prohibiting the allowance was approved,	234 00	
		2,582 00
This sum charged for disbursing on acc. for removing light house, &c. not allowed under the act of 3d March, 1835, above referred to		21 64
Amount of differences,		$2,675 54

No. 5643.

TREASURY DEPARTMENT,
Third Auditor's Office,
April 8th, 1839.

I certify that I have examined and adjusted the account of Capt. William A. Eliason, and find that he is chargeable with the following sums, viz:

To balance on settlement No. 5404, dated March 7, 1839, account Fort Calhoun - -		$3,020 08
Removing light-house at Old Point into Fort Monroe - - - - - -		1,143 13
Incidental expenses of fortifications - -		2,000 00
		$6,163 21
And that he is entitled to credit as follows, viz:		
By disbursements made by him at Fort Monroe, in the first quarter of 1836, including a payment for instruments purchased in 1830, his acconnt for transportation of baggage in 1838, and his per diem allowance of $2 for disbursing at Fort Calhoun from the 7th November, 1834, to 3d March, 1835, on account Fort Calhoun -	$ 304 40	
Incidental expenses of fortifications -	1,891 43	
By requisition No. 3561, on account for removing light-house into Fort Monroe - - - -	1,143 13	
By requisition No. 3594, on account Fort Calhoun - - -	223 50	
		3,562 46
Leaving a balance of - -		$2,600 75
Due to the United States on account of Fort Calhoun - - -	$2,492 18	
Incidental expenses of fortifications -	108 57	
	$2,600 75	

As appears from the statement and vouchers herewith transmitted for the decision of the second comptroller of the treasury thereon.

PETER HAGNER,
Auditor.

To ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this tenth day of April, 1839.

ALBION K. PARRIS,
Second Comptroller.

TREASURY DEPARTMENT,
Third Auditor's Office,
April 12, 1839.

Pursuant to the act of Congress of March 3, 1817, entitled "An act to provide for the prompt settlement of public accounts," I, Peter Hagner, third auditor of the treasury department, do hereby certify that the aforegoing is a true transcript from the books and proceedings of the treasury.

PETER HAGNER,
Auditor.

Be it remembered that Peter Hagner, Esquire, who certified the aforegoing transcript, is now, and was at the time of doing so, third auditor of the treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Levi Woodbury, secretary of the treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

[L. S.]

LEVI WOODBURY,
Secretary of the Treasury.

General Regulations of the War Department referred to in statement at page 14.

Article 67, sec. 14. Where there is no agent for fortifications, the superintending officer shall perform the duties of agent, and while performing such duties, the rules and regulations for the government of the agents shall be applicable to him; and, as compensation for the performance of that extra duty, he will be allowed, for moneys expended by him in the construction of fortifications, at the rate of two dollars per diem, during the continuance of such disbursements: provided the whole amount of emolument shall not exceed two and a half per cent. on the sum expended.

The above is a full, complete, and accurate copy from the "Army Regulations" printed in 1821.

Statement of Appropriations (marked A) referred to at page 16.

ENGINEER DEPARTMENT, WASHINGTON,
January 21, 1841.

J. H. BRADLEY, Esq., *Washington, D. C.*

SIR: In compliance with your request, I have the honor to state, that Captain W. A. Eliason, corps of engineers, commenced disbursing for Fort Calhoun in the fourth quarter of 1834. He received in that quarter from Capt. Lee, the former disbursing agent, $2,109 31, and remittance from the treasury of $10,000; both sums coming from the appropriation of June 30th, 1834. He received nothing more until the 23d April, 1835. What portion of the above $12,109 31 he had disbursed up to the 3d of March, 1835, it is impossible to say, but on the 1st of April, 1835, he had in his hands a balance of - - - - $1,121 80

At this date (1st April) there was in the Treasury a balance of the appropriation of 30th June, 1834 - - - - - - 63,000

On the 2d July, 1836, there was an appropriation of - - - - - - 150,000

There was besides a deposite in the Treasury in 1835, coming originally from the appropriation of 30th Juue, 1834 - - - - 271 81

Making a total to be accounted for by Capt. Eliason since the 1st April, 1835 - - - $214,392 61

There was no appropriation for Fort Calhoun at the session ending 3d March, 1835.

Very respectfully,
Your most obedient,
JOS. G. TOTTEN,
Col. and Chief Engineer.

Order No. 14.

Regulations of War Department referred to in statement at page 16.

HEAD QUARTERS OF THE ARMY,
Adjutant General's Office,
WASHINGTON, *March* 14, 1835.

The following communication has been received from the War Department, and is published for the information of all concerned.

"DEPARTMENT OF WAR,
March 13, 1835.

The proviso in the act of Congress, passed March 3d, 1835,

entitled "an act making additional appropriations for the Delaware breakwater, and for certain harbors, and removing obstructions in and at the mouths of certain rivers, for the year one thousand eight hundred and thirty-five;" and which prohibits the allowance of extra compensation to officers of the army, has been submitted to the attorney general for his opinion, and that officer has decided that it extends to, and prohibits the allowance of all extra compensation, of every kind whatsoever, for which provision is not made by law. Hereafter, therefore, no such extra compensation will be allowed.

This prohibition took effect from the passage of the law, and extends to the following cases:

Per diem to officers on bureau duty.

Per diem to officers in charge of working parties.

Per diem to the Secretary of the Military Board.

Per diem to engineer officers, for disbursing public money.

Per diem to Assistant Engineer at the Delaware breakwater.

Per diem to the members of the Medical Board.

Per centage to Topographical Officers, disbursing in the filed.

Monthly allowance or per centage to officers of the line, temporarily performing staff duties.

Per centage to officers for disbursing funds not properly appertaining to their department.

Alllowance to the Medical Officer purchasing supplies for the medical service.

Per centage to Military Storekeepers for disbursements.

Compensation to officers on duty connected with the removal of the Indians, except their actual travelling expenses, which are allowed by the act of June 30th, 1834, entitled "an act to provide for the organization of the department of Indian affairs."

Allowance to the officer disbursing money at the seat of government under the regulation of the War Department of May 31st, 1833.

Extra compensation to the Assistant Surgeon for attending laborers on the works at Hampton Roads.

Allowance to the officer acting as Adjutant at the military academy.

Allowance to the officer acting professor of chemistry at the military academy.

These cases are enumerated for the information of the army, and embrace all the extra allowances which have been reported to this department in answer to the inquiries which have been made.

It is possible, however, that some may have been omitted, and the enumeration will not, therefore, be considered as sanctioning the allowance of any claim, because it is not herein expressly provided for. But the construction of the act will apply so as to prevent the granting of any extra compensation of any nature whatever, unless expressly authorized by law.

The Attorney General has decided that the general clause in the

above proviso will render illegal the allowance of any per centage or compensation for disbursing appropriations, made previous to, as well as during the last session of Congress.

LEWIS CASS."

By order of Alexander Macomb, Major General, commanding in chief.

R. JONES,
Adjutant General.

Statement of the Pay, &c. of Capt. Eliason, marked B., referred to in Statement at page 16.

Pay and emoluments of Captain W. A. Eliason, from Dec. 31, 1838, the date to which it appears he has received pay, up to the day of his death, June 15th, 1839.

Pay 5 months, 15 | 30, at $50 per month - - -	$275 00
Forage of 3 horses 5 1-2 months, at $24 per month -	132 00
Pay of 1 servant 5 1-2 months, at $8 per month -	44 00
Clothing do 5 1-2 months, at $2 50 per month -	13 75
Subsistence 166 days, 4 rations per day for self, 664 rations - - - - - - - - - -	132 80
Subsistence 166 days, 3 extra rations per day for 15 years' length of service, 498 - - - - -	99 60
Servant 166 days, 1 ration per day, 166 - -	33 20
	$730 35

Fuel and Quarters.

Captain Eliason was entitled to no commutation, for either quarters or fuel, whilst at Fort Monroe, where public quarters were provided. After that time, however, he was entitled as below.

Quarters.

From September 13, 1838, (on the supposition that he no longer occupied public quarters after the date of his being relieved September 12,) to the date of his death.

September, 1838, 18 \| 30 mo. October to May included, 8 mos. 15 \| 30 mo., 9 1-10th mos., 3 rooms per month, at $6 per month, or $18 per month, 9 1-10th months, at $18 per month - $163 80

Fuel, (on the same supposition as above,) September, 18 days, at 6 feet of wood per month cords feet 3 18 \| 30.

From October, 1838, to April, 1839, inclusive, 7 months, at 2 1-2 cords per month - - - - - - -	17 4
May, 6 feet; June, 15 days, 3 feet - - -	9
	19 0 18 | 30

19 cords 0 18 | 30 feet, of which the amount for September, 1838, and May and June, 1839, is commuted at $4 50, the remainder at $6 50.

1 cord, 4 18 | 30 feet, at $4 50 per cord - - -	7 08
17 " 4 " 6 50 per cord - - -	113 75
Total for fuel,	$120 83

Aggregate due Captain Eliason.

Pay and emoluments - - - - - - -	730 35
Quarters - - - - - - - - - -	163 80
Fuel - - - - - - - - - -	120 83
	$1,014 98

Judgment on Case stated for Defendant.

And thereupon, upon the full consideration of the case stated as aforesaid, the said court is of opinion that the proviso in the act of the 3d March, 1835, ch. 303, is only applicable to the disbursing of public money, appropriated by law, during the session of Congress in which that act was passed; and it appearing therein, to the satisfaction of the court, that no part of the money so as aforesaid disbursed by the said defendant, was appropriated at the said session of Congress; the court is also of opinion that the said intestate was entitled to the allowances claimed by him for the disbursements as above stated, and do thereupon order the judgment to be entered for the said defendant.

Plaintiffs' Exceptions.

And thereupon the said plaintiffs, by their said counsel, do except to the said opinion and order of the said court, and do pray the said court to sign and seal this bill of exceptions according to the statute in such case made and provided; which is done accordingly, this 23d day of January, 1841.

W. CRANCH, [L. S.]
JAMES S. MORSELL. [L. S.]

Test, W. BRENT, *Clerk.*

Writ of Error produced.

And whereas afterwards, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and forty-one, the

said United States, by their attorney aforesaid, produced and filed in the circuit court here, the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's Certificate.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said circuit court for the county aforesaid, this 6th day of February, 1841.

W. BRENT, *Clerk*. [L. S.]